

United States District Court  
Southern District of Texas  
FILED

24

APR 25 2001

Michael N. Milby  
Clerk of Court

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION

RAQUEL O. RODRIGUEZ  
AND JOSE L. RODRIGUEZ

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VS.

CIVIL ACTION NO. B-CV-96-177

RIDDELL SPORTS, INC.  
RIDDELL, INC.  
ALL AMERICAN SPORTS CORPORATION  
D/B/A RIDDELL/ALL AMERICAN  
AND CHRIS HOODMAN

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DEFENDANT, ALL AMERICAN SPORTS CORPORATION D/B/A RIDDELL/ALL  
AMERICAN'S MOTION FOR JUDGMENT ON PLEADINGS AND  
MEMORANDUM IN SUPPORT THEREOF

TO THE HONORABLE JUDGE OF SAID COURT:

Now comes All American Sports Corporation d/b/a Riddell/All American and files this its Motion for Judgment on the Pleadings pursuant to F.R.C.P. 12 (c) and moves the court to enter Judgment in its favor as Plaintiffs have failed to state a cause of action upon which they can recover and this party is entitled to judgment as a matter of law.

I.

Plaintiffs' statement of contention in Proposed Pretrial Order 4-20-01, 5(a) and (b) state a claim against "All American Sports Corporation d/b/a Riddell/All American for negligence and gross negligence." Plaintiff abandoned such cause of action before submission of the case to the jury and are therefore precluded from attempting to reassert it at this time. "For the record, Plaintiffs are requesting contrary to my earlier representations, that the jury be charged only with regard to strict liability as alleged

Jose Rodriguez' claim." Mr. Blackburn: SF 1327-28.

II.

Alternatively, under the substantive law of Texas, Plaintiff has failed to state a cause of action under negligence because under Texas law a maintenance contract does not impose on the contractor responsibility to upgrade a product. Muniz v. Ransomes Am. Corp, 921 F.Supp 438, 442(S.D. Tex.1995), aff'd, 81 F.3rd 154 (5<sup>th</sup> Cir. 1996). Where there is no duty there can be no negligence.

The essential elements of actionable negligence are the existence of a duty on the part of one to another; the breach of that legal duty; injury to the party to whom the duty is owed as a proximate result of the breach. Rosas v. Buddies Food Store, 518 S.W.2d 534 (Tex.1975) and cases cited therein. Absent the showing of any one of these elements, no liability can arise from alleged negligence. Graff v. Beard, 858 S.W.2d 998, 919-920 (Tex.1993). Moreover, whether a duty exists under a given set of facts and circumstances is a question of law for the Court. Bird v W.L.W., 868 S.W.2d 767, 769 (Tex. 1994).

As the 5<sup>th</sup> Circuit of Appeals stated in its opinion in this case: "...even if hypothetically, Plaintiffs had made a negligence claim against All American for not using the new foam, to maintain the action the contractor must have a duty to enhance the product. All American Sports Corporation d/b/a Riddell/All American's contract with the school specifically said that it did not have that duty. All American Sports Corporation d/b/a Riddell/All American does not undertake to change or modify the design, construction, material or fitness of the athletic equipment herein listed its (sic) only obligation being to recondition such equipment as herein specified." See exhibit 1.

Rodriguez v Riddell Sports, Inc., et al. 242 F.3d. 567, (5<sup>th</sup> Cir. 2001) at 575.

Since there is no legal duty owed by All American Sports Corporation d/b/a Riddell/All American to Plaintiffs, their negligence and gross negligence claim fails as a matter of law entitling this defendant to Judgment on the Pleadings.

WHEREFORE, PREMISES CONSIDERED, All American Sports Corporation d/b/a Riddell/All American respectfully requests this Court grant its Motion for Judgment on Pleadings and that Plaintiffs take nothing against this party and for such other and further relief, general, special, legal and equitable to which this party may show itself justly entitled.

Respectfully submitted,

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**CERTIFICATE OF CONFERENCE**

This is to certify that I had a conference with Plaintiffs' counsel, Rex Blackburn, and he refused to agree to this motion.



Robert Summers

**CERTIFICATE OF SERVICE**

This is to certify that a true and correct copy of the above was forwarded by telefax transmission and certified mail, return receipt requested to counsel of record on this the 25<sup>th</sup> day of April, 2001.

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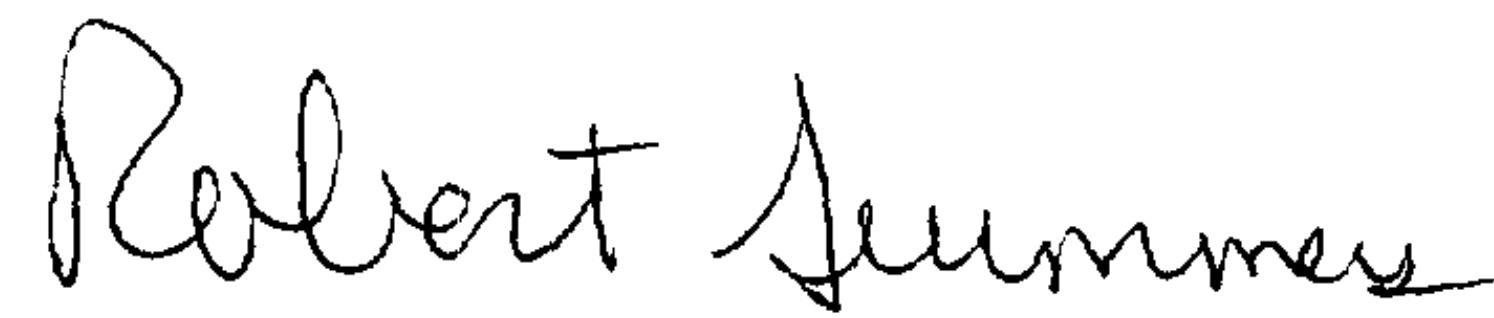
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04/25/01 10:33A P. 002

01/05/99 10:14 FAX 1 773 794 8155

RIDDELL

Nov. 4, 1998 4:32PM RI. LL ALL AMERICAN

No. 1615 P. 2/9

DEC. 27 1998



## ALL AMERICAN



RECONDITIONERS OF TEAM ATHLETIC EQUIPMENT

MAIN OFFICE  
1400 TAYLOR STREET  
ELYRIA, OHIO 44035  
(216) FOOTBALL 288-4225  
(216) 375-4088  
3810 N. 160th  
DETROIT, MI 48212  
(313) 821-0004

SURCHETTSTOWN, PA 15831  
(412) 847-8888  
2, STRICKLEBURG, PA 15831  
(412) 275-9787

FRANKLIN PARK, IL 60131  
(800) 422-9780  
PORT VALLEY, GA 30136  
(800) 275-8814

SAN ANTONIO, TX 78228  
(800) 275-8844  
UNION CITY, GA 30136  
(800) 275-7878

BUFFALO, NY 14213  
(716) 699-6100  
12 ERIE ONTARIO L2A 1A2  
(509) 871-1483

NAME	DATE	How Shipped	No. Box
HODGMANN	12-15-94	3CT	2
SCHOOL	ALL AMERICAN		
STREET	Los Fresnos High School		
CITY/STATE/ZIP	Mile N. Hwy 101 E. Back Roads Line Los Fresnos, TX 78566		
TELEPHONE	409-5340		
TELEGRAM	Avalaya A.D.		
AMOUNT	50.00		
APPROX. RETURN DATE	5-1-95		
Equip. Beyond Econ. Repair			
* REPLACEMENT EQUIPMENT *			
<input type="checkbox"/> Helmets <input type="checkbox"/> Br. Pads <input type="checkbox"/> Other INVOICE SEPARATE YES NO			
<input type="checkbox"/> ATTACH REPLACEMENT ORDER *			

FISCAL YEAR RESTRICTIONS  
Invoice Before \_\_\_\_\_  
Invoice After \_\_\_\_\_

Code	Qty.	City	Mfg.	Model	Part Needed	Est. Qty	Excluded Pads All (As Nee) Only Qty.	Color Sku							
168	28	Riddell		VSR-4		2	20	M	4509204	220P	220N	5	12	60	4 PL
162	27	Riddell		VSR-3		4			4509304	2260		5	12	20	4 PL High
77	38	Bike		7700	3	5			4508504	228N		40	12	40	2 PL
83	13	Manopto		2001	1	2			4508704	228N	1	4	12	80	4 PL Pd 100

(Replace all KPA-Lites)

TOTAL	106	SHELL	<input type="checkbox"/> Painted	<input type="checkbox"/> Scratched	<input type="checkbox"/> Dent	<input type="checkbox"/> Asperges	<input type="checkbox"/> Asperges	Paint Prod. Color Charge	Prod. No	Paint Prod. Color Charge	Prod. No	Paint Prod. Color Charge	Prod. No	Paint Prod. Color Charge	Prod. No
		CONDITION:	<input type="checkbox"/> Shipping	<input type="checkbox"/> Painted	<input type="checkbox"/> Scratches	<input type="checkbox"/> TV. etc.	<input type="checkbox"/> TV. etc.	New Paint Production Color		New Paint Production Color		New Paint Production Color		New Paint Production Color	
							Dent Charge		Prod. No	Dent Charge		Prod. No	Dent Charge		Prod. No
							Same Color Traded Yes No								
27	Code	106	Color To Be Painted	<input type="checkbox"/> All	As Ne.	None									
27			Buff and White	<input type="checkbox"/> All	As Ne.	None									
			Street: Molded		Classed										New Class: Yes No
			Shoulder Pads:												
			Rib Pads:												
			HP Pads (wraparound only):					HP Pads Places							
			Shoulder:	<input type="checkbox"/> Reg.	<input type="checkbox"/> Plain	Inserts Missing	<input type="checkbox"/> All	<input type="checkbox"/> Some							
			Jersey:	<input type="checkbox"/> Reg.	<input type="checkbox"/> Plain	<input type="checkbox"/> Painted	<input type="checkbox"/> Stained	<input type="checkbox"/> Color Run	Game						Prod.
			Pants:	<input type="checkbox"/> Reg.	<input type="checkbox"/> Plain	<input type="checkbox"/> Painted	<input type="checkbox"/> Stained	<input type="checkbox"/> Color Run	Game						Prod.
			Scallop Gaskets:												

I hereby authorize ALL AMERICAN to recondition the athletic equipment listed, subject to conditions printed on the reverse side. I understand that ALL AMERICAN reserves the right to reject any equipment defective, oxidized, or not meeting the expense of repair.

An estimate on any reconditioning order may vary 10-15 percent based on the above itemized quantities. Defective parts discovered during the testing and reconditioning process will be repaired at their respective full price. Defective protective parts, in excess of the estimated quantities, will be returned for verification.

ALL AMERICAN is not responsible for special or assumed estimates. Company will apply its standard charge for transportation and handling. Sales tax will be added if applicable. This is subject to an estimate may vary as explained above.

Total Before Transportation &amp; Sales Tax If Applicable

Authorized Signature

11/24

(210) 233-3300

Phone

3833

All Amer

